Nadler Holds Inquiry into Death Penalty Appeals – Are Innocent Defendants Being Executed?

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WASHINGTON, D.C. – Today, Congressman Jerrold Nadler (D-NY), Chair of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, chaired a hearing on the impact of federal habeas corpus limitations on death penalty appeals. Nadler and members of the Subcommittee explored the current state of death penalty appeals and, specifically, whether the habeas corpus limitations are resulting in executions of innocent defendants who are barred from introducing key new evidence in their cases.

The Subcommittee also considered legislation designed to solve this glaring problem. Nadler is an original co-sponsor of H.R. 3986, the Effective Death Penalty Appeals Act, sponsored by Rep. Hank Johnson (D-GA). The legislation would provide a procedural remedy for death row inmates’ petitions for appeal. H.R. 3986, which is endorsed by Amnesty International, the American Civil Liberties Union, and the NAACP, would allow federal courts to grant habeas corpus relief if warranted by newly discovered evidence that demonstrates probable innocence.

“It is incumbent upon those who support the application of the death penalty to ensure that it is administered fairly, and that every risk of error is wrung out of the system,” said Nadler. “The right to petition for a writ of habeas corpus is really the last line of defense against error and injustice in our legal system. In recent years, the right of habeas corpus has been the object of derision, and subject to attack, just as resources to assist defendants in state court proceedings have simultaneously diminished. In many ways, we have made a mockery of the administration of justice and the search for the truth.”

In 1996, Congress enacted legislation that amended federal habeas corpus law, placing strict time limitations on commencement of appeals and limiting their number. However, since the passage of new federal procedures, there have been concerns about the equity of the process, especially the inability of defendants to present newly discovered evidence of innocence.

Witnesses at the hearing were: Professor John H. Bloom, Cornell Law School; Justice Gerald Kogan, former Chief Justice Florida Supreme Court (1987-1998); Stephen Hanlon, American Bar Association Death Penalty Moratorium Project; and, Michael O’Hare, Supervisory Assistant State’s Attorney, Connecticut State’s Attorney Office.

The following is the text of Nadler’s opening statement:

“Today’s hearing examines the impact of the federal habeas corpus rules on the application of the death penalty in the United States. It is incumbent upon those who support the application of the death penalty to ensure that it is administered fairly, and that every risk of error is wrung out of the system.

“The right to petition for a writ of habeas corpus is really the last line of defense against error and injustice in our legal system. While executive clemency is still a possibility, it is subject to the political winds in ways that the independent judiciary is – hopefully – not. Just ask Governor Huckabee.

“In recent years, the right of habeas corpus has been the object of derision, and subject to attack. The Anti-Terrorism and Effective Death Penalty Act of 1996 was an especially egregious example of the extent to which some have been willing to go to expedite the use of capital punishment. Its main flaw is that it set strict time limits for bringing habeas petitions – one year generally, and, if a state qualifies, six months in capital cases.

“The standard is even more disturbing: it gives extreme deference to state court decisions. It prohibits the court from granting relief for any claim adjudicated on the merits in state court unless the state decision rejecting the claim is ‘contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of United States’ or is ‘based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.’

“At the same time, resources to assist defendants in state court proceedings have diminished. In many ways, we have made a mockery of the administration of justice and the search for the truth.

“What is really ironic about all this is that, while these changes were sold to Congress as a way to move the cases and make the system more efficient, in fact it has had just the opposite effect. The time it takes for these petitions to move through the process has increased substantially, and confusion about existing legal standards has been widespread.

“I want to commend our colleague, the Gentleman from Georgia, for introducing legislation to correct this situation. I am pleased to be an original cosponsor, and I look forward to working with him to bring reason and justice back to this important process.

“While there is always a push to move faster with executions, the record indicates that this rush to execute has called into question the fairness and accuracy of our machinery of death. We stand alone in the industrialized world in our commitment to capital punishment – even Russia has a longstanding moratorium on executions. It is a disgrace, and the limitations on the Great Writ only exacerbate the problem.

“I think we would do well to remember Justice Blackmun’s observation in his opinion dissenting from the Supreme Court's decision denying review in a Texas death penalty case, Callins v. Collins in 1994:

‘Twenty years have passed since this court declared that the death penalty must be imposed fairly and with reasonable consistency or not at all, and despite the effort of the states and courts to devise legal formulas and procedural rules to meet this...challenge, the death penalty remains fraught with arbitrariness, discrimination...and mistake...

‘From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored...to develop...rules that would lend more than the mere appearance of fairness to the death penalty endeavor...Rather than continue to coddle the court’s delusion that the desired level of fairness has been achieved...I feel...obligated simply to concede that the death penalty experiment has failed. It is virtually self evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies... Perhaps one day this court will develop procedural rules or verbal formulas that actually will provide consistency, fairness and reliability in a capital sentencing scheme. I am not optimistic that such a day will come. I am more optimistic, though, that this court eventually will conclude that the effort to eliminate arbitrariness while preserving fairness “in the infliction of [death] is so plainly doomed to failure that it and the death penalty must be abandoned altogether.” I may not live to see that day, but I have faith that eventually it will arrive. The path the court has chosen lessen us all.’

“If anything, after years of exonerations of death row inmates and in other areas of the criminal law, and notorious decisions like the 5th Circuit’s in which the court held that an attorney sleeping through a capital trial is not reversible error, Justice Blackmun’s admonition rings truer today than it did a decade and a half ago.

“I look forward to the testimony of the witnesses on this very timely and important subject, and I yield back the balance of my time.”